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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re I.R., a Person Coming Under the  
Juvenile Court Law.

B213311  
(Los Angeles County  
Super. Ct. No. CK70776)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.R. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant J.R. (mother).

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant J.R (father).

James M. Owens, Assistant County Counsel, and Denise M. Hippach, Deputy County Counsel for Plaintiff and Respondent.

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## I. INTRODUCTION

The mother and father of the child, I.R., appeal from parental rights termination orders. (Welf. & Inst.,<sup>1</sup> § 366.26.) The mother also appeals from an order denying her section 388 petition. We affirm the orders.

## II. BACKGROUND

### A. November 2007

#### 1. The November 19, 2007 detention report

The Department of Children and Family Services (the department) filed a November 19, 2007 detention report. The 17-month-old child was detained and a section 300 petition was filed after his mother brought him to a hospital, on November 14, 2007. The mother said she had picked the child up from daycare, where she was told he had fallen. The injury—a spiral fracture of the left arm—was inconsistent with the mother’s explanation. The mother was interviewed by law enforcement officers. She was uncooperative and would not give the name of the daycare provider. After an hour of questioning, the mother said: the injury occurred in the morning when she was taking the

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<sup>1</sup>

All further statutory references are to the Welfare and Institutions Code except where otherwise noted.

child out of his car seat; he did not appear to be injured; and so she left him with his daycare provider, L.P. But later L.P. told the mother that the child had fallen and could not move his arm. The child was taken into protective custody and placed with his paternal grandparents.

According to the Los Angeles County Sheriff's Department's November 14, 2007 incident report, the mother told officers the child had fallen while playing at the babysitter's residence who was identified as L.P. The father said he had received a phone call from the mother while he was at work. In the telephone call, the mother said the child was injured while at the babysitter's house and she had taken him to the hospital. The reporting physician said the injury to the child's arm could not have happened in a fall. Therefore, the child was taken into protective custody.

On November 15, 2007, the day following the child's detention, the mother spoke to a department social worker, Kim Herring. The mother claimed that she accidentally injured the child when she removed him from his car seat. The mother had known the daycare provider, L.P., for many years. The mother did not want L.P. to be accused of child abuse. Ms. Herring saw the child at the sheriff's station and later at the paternal grandparents' home. Ms. Herring did not see any marks or bruises on the child.

The father was interviewed at the sheriff's station. The father said the child was either hurt at L.P.'s home or when the youngster was with the mother. The father also said he was angry with the mother's behavior. In addition, the father stated, "[H]e was also becoming suspicious that more than what [the mother was] saying occurred either with her or . . . at the daycare provider's home." The mother had no criminal history. The father was twice convicted of driving while his license was suspended, on July 31 and October 1, 2007.

## 2. The November 19, 2007 Addendum Report

The department filed an addendum report on November 19, 2007. Department social worker Esperanza Lopez had spoken to the charge nurse at the hospital where the child was treated. The nurse said the child had suffered: the arm fracture; a hematoma and abrasions to the forehead; and abrasions to the cheek. The nurse further stated, “[T]he mother gave different explanation[s] as to how the child sustained the injury and [those explanations were] inconsistent with the child’s injury.” Ms. Lopez also spoke with the physician who treated the child at the hospital, Dr. Patrick Bozeman. Ms. Lopez asked Dr. Bozeman whether the child’s injuries “were consistent with inflicted trauma.” Ms. Lopez reported: “Dr. Bozeman [said] that the child’s injuries could not have occurred in the way the mother stated, by a fall or pulling the child [from] a car seat. Dr. Bozeman stated that there is suspicion of physical abuse due to the child sustaining a fracture. Dr. Bozeman stated that the fracture was sustained due to someone forcibly twisting the child’s arm. Dr. Bozeman stated that toddler[s’] arms don’t fracture from simply falling because their body weight is not heavy enough.” Dr. Bozeman also explained to Ms. Lopez that pulling a child from a car seat might result in a dislocated joint, but not a bone fracture. The department recommended that magnetic resonance imaging and computerized tomography scans be taken of the child.

## 3. The detention hearing

The parents appeared at the November 19, 2007 detention hearing. Counsel were appointed to represent them. The father was found to be the presumed father of the child under Family Code section 7611. The parents had declared they had no known Indian ancestry. The juvenile court found the Indian Child Welfare Act was inapplicable. John Young was appointed to represent the mother. Mr. Young stated: the mother panicked when she realized she was under suspicion of having abused the child, and due to the panic, the mother lied to the doctor; in fact, the injury did not occur until after she picked

the child up from daycare and took him with her to a Target store; and she removed the child from his car seat “by grabbing his arm and pulling it out of the car seat and setting him down to walk.” The father then informed the juvenile court that the child had been with a sister, M.R., and not with the daycare provider earlier identified, L.P. There was an extended discussion about the conflicting stories and the failure to account for the bruises and abrasions on the child’s face. The juvenile court then ordered the child detained, to remain in his grandparents’ home. The parents were to have monitored visitation. The jurisdiction and disposition hearing was set for December 20, 2007. Additionally, the juvenile court appointed Dr. Anthony Shaw to conduct an Evidence Code section 730 evaluation. The report was to be prepared for the December 20, 2007 hearing. Based on her claim the child was injured at the Target store in Seal Beach, the mother’s criminal matter was at first handled by the Orange County District Attorney’s office. The Orange County case against the mother was dismissed on December 14, 2007, and the matter was later referred back to the Los Angeles authorities.

On November 20, 2007, Los Angeles Sheriff’s Department Detective Stephen Reid interviewed the emergency room charge nurse at the hospital where the child was treated. The nurse said, among other things, that the child’s injury appeared to have been very recent, i.e., within a few hours of arriving at the hospital. Detective Reid then spoke to M.R., the father’s sister. M.R. said: she had watched the child on November 14; the father had dropped the child off around 9 a.m.; later, she said it might have been around 2 p.m.; the child was not injured while he was in her care; and the mother picked him up around 5 or 5:30 p.m. The paternal grandfather: corroborated M.R.’s statement that she had cared for the child that day; said he did not know whether there had been any physical violence between the parents; acknowledged “there [was] a lot of arguing in their home”; and sometimes the father came to his parents’ home to stay.

Also on November 20, 2007, Detective Reid interviewed L.P. As noted, L.P. is the babysitter the mother claimed had been caring for the child when he was injured. L.P. had known the mother and her family for a long time. L.P. had cared for the child in the past, but not since the last week of October. L.P. said: “She received a text message

from [the mother] early Thursday morning [November 15, 2007] [at] approximately 2:00 a.m. [The mother] was asking for [L.P.'s] address. [L.P.] did not know why [the mother] was asking for her address at that time and did not answer the message. Later that morning [L.P.] received a phone call from [the maternal grandmother]. [She] said [the mother] had taken [I.R.] to the doctor because he had a fever. At the doctor's office [the mother] pulled [the child] from his car seat too hard and injured his arm. [The mother] then told the doctor that the injury to [the child's] arm occurred while he was at [L.P.'s] home. [The maternal grandmother] asked [L.P.] to lie for [the mother] and say [I.R.] fell while she was babysitting him." The mother had come to L.P.'s residence on November 14, 2007, around 6 p.m. and had stayed for about 15 minutes. At that time, the child was with the mother and he was fine.

The parents told Detective Reid: M.R. had taken care of the child the day of the injury; the mother had picked the child up from M.R.; the child was not injured at L.P.'s house; the injury occurred when the mother pulled the child from his car seat later that evening. The mother said she had lied about how the injury happened because she was afraid. On November 21, 2007, Detective Reid placed the mother under arrest for willful cruelty to a child. The mother agreed to take a polygraph examination. Deputy James Garcia administered the polygraph test. The mother's answers to two of the questions showed deception. The mother remained in custody until the criminal case against her in Los Angeles was dismissed on December 14, 2007.

## B. December 2007

### 1. The section 385 petition

On December 11, 2007, the department filed a section 385 petition and sought an ex parte order removing the child from his paternal grandparents' home. A December 11, 2007 detention report related the following. On December 4, 2007, a dependency investigator, Lupe Arredondo, interviewed the mother. The mother admitted that the father had injured the child. Mr. Arredondo then interviewed the father. It was reported that, "[T]he father also admitted . . . that he injured the child." Additionally, Mr. Arredondo discovered the paternal grandmother had been charged with assault with a deadly weapon. On October 17, 2007, the paternal grandmother had assaulted a neighbor with a chair. The grandmother was convicted and ordered to enroll in anger management therapy.

On December 5, 2007, the child was removed from his paternal grandparents' home and placed with the maternal grandparents, who lived across the street. The maternal grandparents took the child for a medical examination because he had been sick for several days. An X-ray was taken to rule out pneumonia—which the child did not have. The X-ray revealed healing rib fractures. On December 6, 2007, department social worker Linda Gaskins received a call from medical personnel stating the child had three fractured ribs. Law enforcement officers subsequently concluded the child should be removed from relative care since it was unclear who had injured him. The child was placed in foster care. The parents were arrested and charged with physical abuse to a child. On December 11, 2007, the juvenile court granted the department's section 385 petition. The child was removed from relative placement and placed in foster care.

## 2. The amended section 300 petition

On December 20, 2007, the department filed a first amended section 300 petition and a jurisdiction and disposition report. The child remained in foster care. On November 29, 2007, Mr. Arredondo had met with the father at the paternal grandparents' home. The father denied knowing what had happened to the child. Further, the father did not know why the child had been detained. Mr. Arredondo believed the father was being uncooperative. The father said, "All I know is that [the mother] is in jail and I don't think she should be there because it was an accident." When asked to explain what he meant by an "accident," the father said: "[The mother] said she pulled him out of the car seat and hurt his arm. That's all I know what happened. That's what I know she said to the police and now she's in jail." The father denied harming the child in any way. The father denied he and the mother fabricated a cause of the injury. The father denied knowing why the mother had lied and said the child was injured at L.P.'s house. The father claimed not to know how the child got the bruise and the abrasions. The father expressly stated he was not present when the injuries were sustained. According to the father, the child was known to fall often. Further, the child had a hard time keeping his balance. At the conclusion of the interview, Mr. Arredondo discussed his expectations: "[T]his investigator informed the father of his expectations to protect the child if and when returned to his care, particularly from the mother. The father was informed that the mother, if released from incarceration, would be permitted no unsupervised contact and most likely not be permitted to reside in the home with the child. The father had difficulty understanding why such measures were needed against the mother and stated, 'I don't understand why [the mother] can't be alone with the baby. I don't think it's right. This was all an accident. She didn't do anything wrong.'" While in the paternal grandparents' home with the father and the child, Mr. Arredondo observed that the child did have some trouble walking. Further, the child lost his balance on more than one occasion and was heard to fall in the kitchen.



On December 4, 2007, Mr. Arredondo interviewed the mother in jail. The mother told Mr. Arredondo: “‘I didn’t hurt [the child.] I’m not going to lie anymore. It was [the father]. He told me it was an accident and not to say what happened because he didn’t want to go to prison. He told me to say it wasn’t him and that’s why I made up this whole thing about pulling [the child] out of the car seat. We . . . didn’t think it would get this far, me being in here. We thought it would all go away. I didn’t know what to say when the doctors started asking me questions. [The father] told me not to say that he did it but I’m not going to lie for him anymore. It’s not fair, me being in here and he’s there with the baby. I didn’t do anything to [the child]. I know I shouldn’t have lied.’” The mother also told Mr. Arredondo that she was contacted by a detective. But before she met with the detective, she had a conversation with the father: “[He] asked me are you going to tell him I did it. He didn’t want me to say. He told me he didn’t want to get into trouble that he would go to jail. That’s why I lied.” On November 21, 2007, the mother voluntarily submitted to and failed a polygraph test. The mother said, “‘I told the guy who gave me the polygraph . . . that I was the one who hurt [the child] but I didn’t. That’s why I failed the polygraph because I was lying saying that I did it when it was really [the father].’” Detective Reid reported that the mother was found to be deceptive when asked, “Are you lying to me today about how [the child] was injured?” and “Are you lying to me today about how [the child] received the injury to his left arm?”

The mother described to Mr. Arredondo what happened on the day the child was injured: “‘I left for work around [7 a.m.]. The baby was with [the father] all day until I got home. [The father] hasn’t been working so he’s been taking care of the baby. I got home around [5 p.m.] When I got home the baby was on the couch and [the father] was standing up. I knew something was wrong because the baby didn’t come to me. The baby usually runs to me when I get home but he just stood there on the couch. That’s when [the father] told me something is wrong with the baby’s elbow . . . I think it’s fractured or broken. I looked at the baby and he couldn’t move it. I asked [the father] what happened and he said he was horsing around with the baby and hurt his elbow. I think he said that he picked the baby up the wrong way or something. I told him the baby

needed to go to the hospital and he was like what are you going to tell them. He told me not to say he did it. He said I don't want to go to prison. . . . [Later, at the hospital], he knew I was lying for him but he never said anything. He didn't want me to say he did it.” The mother said she did not know why the father said he did not want to go to prison, but she did not think anything of it; he told her it was an accident. Mr. Arredondo asked the mother about the child's other injuries. The mother said the hematoma and the abrasion occurred on separate occasions when the child was with the father. The mother claimed that the child had coordination problems.

On the day following the interview with the mother, December 5, 2007, Mr. Arredondo questioned the father again, pointing out the discrepancies in the parents' stories. The father said: “[The mother is] innocent. She didn't hurt [the child]. I did. It was an accident. I didn't think it would get this far.” Mr. Arredondo wrote in his report: “The father explained that he was at the door when the child walked up to him with arms raised to be carried. The father explained that he grabbed the child by the hands and swung him over his (father's) back as if to give him a piggy-back ride. According to the father, the child's position on his back was face up and that in the process of swinging the child over his shoulder, he heard the child moan in pain.” The father further explained that when the mother got home, she called him at his parents' house to let him know she was there. Then, the father took the child back home and told the mother about the injury. Mr. Arredondo asked the father why the child was not taken to the hospital. The father did not orally respond; he shrugged his shoulders and nodded his head. The father denied instructing the mother to lie about the injury. The father said he was “pretty upset” when he found out the mother was trying to blame the injury on L.P. But the father could not explain why “he fail[ed] to come forth and take responsibility for his actions” particularly if the injuries were accidental in nature. The father also denied saying he did not want to go to prison: “I never said that. I never said I was afraid of getting into trouble or anything like that.”

On December 5 and 12, 2007, Mr. Arredondo interviewed the maternal grandparents. Both said the father was “too hard” on the child when they played

together. But the maternal grandparents had never seen the child injured. They also said: the mother had once stood in place of the father for a traffic ticket he received; the mother took responsibility for the ticket; she appeared in court; and completed a traffic school course in the father's place. The maternal grandfather could not understand why the mother was lying to protect the father with regard to the child's injuries. The maternal grandfather related to Mr. Arredondo, "I think [the mother] is covering up for [the father]."

Mr. Arredondo spoke twice with the paternal aunt, M.R., who was 16 years old. M.R. had previously been interviewed by a detective. In that interview, M.R. said she had taken care of the child on the day he was injured. At first, she said she cared for him beginning at 9 a.m. Then she said the child came to her about 2 p.m. But M.R. told Mr. Arredondo that the child was with the father and she had not seen the youngster that day. M.R. said she did not know how the child had gotten the hematoma or the abrasions, but he had poor coordination and he fell a lot.

On November 29, 2007, Mr. Arredondo interviewed L.P., the babysitter at her home. L.P. said she had provided day care to the child in the past, but not on the day his arm was fractured. L.P. spoke to Detective Reid. The maternal grandmother had contacted L.P. on November 15, 2007. In their conversation, the maternal grandmother asked L.P. to lie. L.P. was asked to falsely state the child was injured when he fell at her home.

On December 12, 2007, Mr. Arredondo questioned the mother about the child's fractured ribs. The mother denied any knowledge of the injury. Mr. Arredondo also asked the mother about a September 13, 2007 incident when the child was seen at Los Alamitos Medical Center for an injured right shoulder. The mother said the child had fallen when both parents were present. Also on December 12, Mr. Arredondo questioned the father about the rib fractures. Mr. Arredondo described the interaction as follows: "This investigator explained to the father, in the mother's presence, that he had already spoken to the mother about the rib fractures, which she denied any knowledge of. This investigator inquired of the father whether he knew of how the child's ribs were

fractured, which he proceeded to nod his head left to right and replied, 'Nope.' This investigator inquired with the father whether he wished to elaborate on his response, to which he did not reply." On December 13, 2007, the mother telephoned Mr. Arredondo and related a conversation she had with the father about the child's rib injuries: "'He [father] said that he was watching the baby and he had put the baby in the swing and was pushing him. The swing is clipped onto the tree and he was pushing the baby in the swing and the swing fell to the ground with the baby in it. [The father] said it happened about a month ago.'" The mother told Mr. Arredondo she never knew the child had fallen and did not notice any injury at that time. According to the mother, the father never said anything about the accident until now.

With respect to the parents, Mr. Arredondo observed: "It [would] be easy to state that the mother is young, naïve and her failure to act was due to maturity issues; however, the mother was employed as a medical assistan[t] and reportedly half way into her nursing program at Golden West College. In this investigator's opinion, the mother was fully aware of her decision and demonstrated no ability to protect her child. [¶] Further, the mother admittedly has protected the father on a prior occasion when she appeared in court and participated in traffic school for an infraction committed by the father. This only further supports the belief that the mother will again protect the father if a crisis were to occur, even if in lieu of the child. [¶] As with the father, he has been resistant at best. Had the mother not disclosed he injured the child, this investigator questions whether the father would have come forth and assumed responsibility for his actions. This only clarifies the character of the father which lends strong concern in his ability to [make] appropriate decision[s] on his child's behalf."

## C. January 2007

### 1. The Evidence Code section 730 evaluation

Dr. Anthony Shaw, a professor emeritus in pediatric surgery, was appointed to review the child's medical records and offer an opinion as to the cause of the youngster's injuries. (Evid. Code, § 730.) Dr. Shaw reviewed medical records from three events. First, Dr. Shaw reviewed the September 13, 2007 medical records when the child reportedly fell in the park. On this occasion, the child injured his right shoulder, but there was no evidence of skeletal injury. Second, Dr. Shaw reviewed the November 14, 2007 records concerning the arm fracture. Third, Dr. Shaw examined the December 5, 2007 records when a chest X-ray revealed healing fractures of the child's sixth and seventh ribs. In a report dated January 17, 2008, Dr. Shaw noted, "There is nothing in these radiographs that allows for a definitive distinction between abusive and accidental injury." Dr. Shaw concluded: "It is unfortunate that a skeletal survey was not done at [the hospital] when [the child's] arm fracture triggered suspicion of abuse because it could have helped determine if the *rib fractures* were present at that time. The *humerus fracture* can result from a fall in a running toddler; however, no such fall—which would have been painful—was described by any of [the child's] caretakers. The ribs could also have been the result of an accidental impact injury in the park fall even though the radiograph taken on [September 13, 2007] failed to show injury to his ribs. The over-the-shoulder maneuver that the father belatedly demonstrated on [December 12, 2007] could have caused a spiral fracture of [the child's] humerus. [¶] However, that being said, the sequential lies told by both parents and by the paternal aunt contribute to a serious suspicion of inflicted injury. [The mother] lied repeatedly to protect [the father] when she apparently knew all along that he was responsible for [the child's] injury on [November 14, 2007]. That [the mother] took [her son] promptly for medical attention . . . is to her credit. The father . . . let the mother of his child go to jail before admitting that he was [the child's] caretaker on [November 14, 2007] and had injured the child[ ]

‘accidentally.’ In a setting in which parents and other family members lie to conceal the cause of a child’s injury the child cannot be presumed to be safe. . . . I cannot say with medical certainty whether these injuries . . . were the result of intentionally inflicted (abuse) or were inflicted accidentally. It is the cover-up that makes me worry for the future safety of this little boy.”

## 2. The department’s interim review report

In its January 23, 2008 interim review report, the department recommended that, given Dr. Shaw’s report, the child remain in foster care. The department noted in part: “In consideration of Dr. Shaw’s evaluation, there remains no conclusive evidence supporting whether the child’s injuries were the result of intentional or accidental means. The only truth known is that the mother and father purposely fabricated their testimonies in an attempt to protect themselves. At this present time, it is certain that the mother and father cannot be trusted to protect the child.”

### D. March 2008

The department filed a March 10, 2008 detention report. The child remained in foster care. The matter was on calendar for a mediation hearing and a report addressing possible reunification services and the parents’ participation in programs. The department recommended reunification services *not* be offered to the parents concluding, “[T]here is no reasonable mean[s] that the child can be protected in the care of the parents given their sequential lies to conceal the child’s injuries.” A “Team Decision Making [] meeting” was held on March 6, 2008. The mother was present, but the father failed to appear. It was the conclusion of the social workers present that the child’s safety could not be guaranteed in the care of maternal or paternal grandparents. As of March 2008, the mother and father were residing together in the paternal grandparents’ home. The mother and the father had enrolled in parenting classes and had attended 8 of the 12

required sessions. The Intercommunity Child Guidance Center reported the mother's attendance was excellent and she participated in the classes. The mother had also participated in two individual psychotherapy sessions with Rebecca R. Schrock, a marriage and family therapist trainee. Ms. Schrock did not provide any information as to the mother's progress. The father had not enrolled in individual counseling. At the March 10, 2008 hearing, the parents requested increased visitation. The trial court ordered that they have at least twice weekly visits with the child.

#### E. April 2008

The department filed an April 21, 2008 interim review report. The child remained in foster care. The parents had begun parenting classes on January 3, 2008. As of March 5, 2008, they had each completed eight sessions. As of April 9, 2008, the father had completed all 12 of the parenting classes. Mr. Arredondo, the department investigator, had spoken with the parenting instructor, Elenore Rodriguez. Ms. Rodriguez said the mother was actively involved in the sessions. The mother appeared motivated to improve her parenting skills. According to Ms. Rodriguez, the father, on the other hand, was uninvolved in the sessions. Ms. Rodriguez questioned his motivation.

The parents also had received individual psychotherapy. The mother had participated in two sessions of individual psychotherapy. The father had participated in six such sessions. The topics discussed with the father included "identifying abuse" and awareness of proper child care and parental responsibilities. Mr. Arredondo had interviewed the father's therapist, Michael Mahan, a marriage and family therapy trainee. Mr. Arredondo reported: "Mr. Mahan noted having met with the father on six of their agreed ten sessions. According to Mr. Mahan, the father exhibits good participation in sessions and has disclosed the allegations against him in limited terms. [Mr. Mahan] expressed concerns with the father, primarily the father's lack of involvement and initiative in scheduling his sessions. Mr. Mahan questions the father's motivation and suspects the mother is taking most of the initiative to schedule the father's appointments."

With respect to the father, Mr. Arredondo stated: “Having spoken with the father’s parenting instructor . . . and his therapist . . . , it doesn’t appear the father is truly vested in his recovery. Since the onset of this case, the father has shown little to no cooperation and has at best been evasive with the [department]. The most recent example was on [March 6, 2008] when the father failed to appear for a Team Decision Making meeting that was scheduled around his working hours. It was not until recently that the father contacted this investigator to inquire about his Court matter. The father claimed the child’s injuries were accidental and that he should be given an opportunity to reunify. Prior to this, the father showed no interest or motivation to improve his behavior. Perhaps the realization of losing his child to adoption has finally propelled him to action, though most likely out of panic. Basically, if the father is unable to demonstrate any motivation and involvement with his parenting and therapy, how can he be expected to prove he has overcome the behaviors that brought him to the attention of the Court[?] As of the writing of this report, the father has failed to do so with the likelihood of such occurring being poor. The child’s safety cannot be protected in the father’s care.”

Mr. Arredondo concluded the mother’s efforts were insufficient considering she had attended only two individual therapy sessions since her December 12, 2007 release from incarceration and “her blatant failure” to protect the child. In addition, the mother continued to reside with the father. Mr. Arredondo remarked: “The mother’s inability to act on behalf of her child still troubles this investigator. It’s further troubling that the mother continues to reside with the father given how he reportedly directed her to lie to hospital staff about the child’s injuries (which the father denied), how the father allowed her to falsely take blame for injuries cause[d] to the child, allowed the mother to be incarcerated and serve several weeks in jail and would have allowed her to remain if not for the mother’s disclosure to this investigator. The mother’s inseparable attachment and protection of the father requires further attention in counseling. The mother has yet to demonstrate any likelihood that she can or will make responsible decisions on behalf of her child. Presently, there are no reasonable means that the child can safely be returned



to the mother's care." Mr. Arredondo found the child to be at a "very high risk" from the parents.

The maternal grandparents had been evaluated for placement. Although they were committed to providing for their grandson and had been regularly involved in his life prior to foster care placement, the department social workers remained concerned about the maternal grandparents' ability to protect the child. Placement in the maternal grandparents' home would allow the parents access to the child. In addition, when the child's fractured arm was first discovered, the maternal grandmother spoke with a former babysitter, L.P. In that conversation, the maternal grandmother asked L.P. to falsely claim the child had been in her care at the time he was reportedly injured. The maternal grandmother denied having done so. According to L.P., the mother had asked the maternal grandmother to make the request to lie.

Mr. Arredondo had reinterviewed L.P. by telephone. He reported: "According to [L.P.], the maternal grandmother . . . requested she claim to have cared over the child . . . (about the time of injury unbeknownst to [L.P.]). [L.P.] informed this investigator that at the time of the maternal grandmother's request, she was unaware the child had been injured and hospitalized. [L.P.] noted that the mother had requested of the grandmother to call her with this request. Such was told to [L.P.] by the grandmother . . . [L.P.] reportedly refused to agree with the grandmother's request as she reiterated to this investigator having not provided care to the child for several weeks prior to the [November 14, 2007] injury. [¶] The Court should be aware that [L.P.] initially denied being instructed by [the maternal grandmother] to lie about the child's whereabouts at the time of injury. [L.P.] no[w] confirms such to be true, which she previously admitted to Detective Stephen Reid."

The matter was on calendar April 21, 2008 for adjudication and a contested disposition hearing. It was trailed to April 23, 2008 for trial setting. On April 23, 2008, it was continued to May 16, 2008.

## F. May 2008

### 1. The adjudication hearing

#### a. overview

On May 16, 2008, this matter was on calendar for adjudication and a contested disposition hearing. The parents were not present when the adjudication hearing commenced, although they had been ordered to be present. The following reports, with attachments, were received in evidence: the November 19, 2007 detention report; the December 11, 2007 detention report; the December 20, 2007 jurisdiction and disposition report; the January 17, 2008 Evidence Code section 730 evaluation report; the January 23, 2008 interim review report; the March 10, 2008 interim review report; and the April 21, 2008 interim review report. The parents and paternal aunts subsequently appeared.

#### b. The mother's testimony

The mother testified she took the child to the hospital on November 14, 2007, because his arm was "kind of limp" and he had marks on his face. She lied to the doctors about what had happened. She said the child had fallen while being cared for by his babysitter. Later that day she spoke to the police. At first, she told them the child had fallen at the babysitter's home. Then the mother told the authorities she had accidentally pulled the child out of the car seat incorrectly. Both versions were lies. While still at the hospital, the mother also spoke to a social worker. The mother said the child was injured when she pulled him from his car seat. That version likewise was a lie. When the mother first appeared in court, on November 19, 2007, she continued to lie, saying she had pulled the child out of his car seat, accidentally injuring him.

One week later, the mother spoke to Detective Reid. At first, she told him the same lie. She also said she had picked the child up from the father's sister, M.R., who

had been babysitting the youngster. But that was also a lie. Later, the mother spoke to Deputy Garcia. The mother told Deputy Garcia the same untrue story about the car seat. At that time, she was arrested and spent some time in jail.

While she was in custody, on December 4, 2007, she was interviewed by Mr. Arredondo. She had lied up to that point because she was afraid of getting into trouble. She had never been in this situation. She described her view of her “situation”: “Like my son being hurt, it was an accident. I don’t know what to expect out of the doctors and everybody else.” The mother told Mr. Arredondo that she lied about how the child was injured because the father was afraid of going to jail. According to the mother, the father had already been incarcerated. She denied telling Mr. Arredondo the father had admitted injuring the child and was afraid of going to jail for that reason. The father told her he was afraid people would think he was responsible for the injury and that he would then be jailed. The mother testified: “[T]he way he explained it, . . . he twisted [the child] around his shoulders and stuff like that, to take him to my mother-in-law’s house. He pulled accidentally and twisted the baby’s arm when he was doing that.” When the father told her people would think he had done it, she just started lying. She was not afraid he would go to jail. But she never told the father that. Before she went to the hospital, the father had told her what happened. She did not discuss what to tell the doctors with the father and he did not suggest that she lie. The father, who was unemployed, had been watching the child that day. But he had a group interview at a grocery store that evening. As a result, because of the job interview, the father could not take the child to the hospital. When the mother was questioned, the following occurred: “Q. [ ] Did you ask [the father] why he didn’t take [the child] to the hospital? [¶] A. No. [¶] Q. Did you wonder why? [¶] A. No.”

The mother further testified the child had also been injured on September 13, 2007, when he fell off a slide at the park. Both parents were present and took him to the hospital. While she was in jail, the mother talked to Orange County Sheriff’s Investigator Solis. She described for Investigator Solis how the child was injured on a slide at a park.

The injury occurred on September 13, 2007, when the father pushed the child head first down the slide.

At some later point, in December, she learned the child had broken ribs. She did not know how his ribs were broken. The father never told her how he thought the broken ribs occurred. The mother told Mr. Arredondo that the father said the child had fallen from a swing. And she believed that was the explanation for the broken ribs. The father said it had happened before November 14, 2007. But she was not surprised that he had not told her about it earlier. She believed the child's ribs were *not* broken. From her medical training, she knew that a child with broken ribs could neither walk nor move and would cry all the time.

The mother testified this was the first time she had lied for the father. But she admitting taking responsibility for a traffic ticket he had received. In fact, she attended traffic school for him.

The mother did not think the father had intentionally injured the child. And there was not anything she could imagine learning that would make her believe it was true. The parents were living together at the paternal grandparents' house. The child got the bruise on his forehead when he fell in the house where they formerly resided. He had also fallen, on another occasion, at the grandparents' house. She did not know how he had gotten the scratch on his cheek. According to the mother, the child would fall "a lot" and had flat feet. Although the child does not have an arch, she has neglected to take the child to see a doctor for that condition.

The father had at some point asked her to lie for him because he was afraid of going to prison. On November 14, when she came home from work, the father said that the arm was fractured. The mother described the child's arm, "It was limp and just down." She was not angry that the father asked her to lie. But she was angry that she had to go to jail for him. It was probably one and one-half hours between the time the father told her the child had been injured and when she arrived at the hospital. After the child was removed from her care, the father did not at any point tell her to just tell the truth.

### c. The father's testimony

Upon arriving at the hospital on November 14, 2007, the father realized the mother was telling several different stories as to how the child was injured. And the father knew that those stories were untrue. The father in fact knew how the child had been injured. But the father did not want to volunteer that information to anyone. When he arrived at the hospital on November 14, 2007, he was upset that the mother had lied about how the injuries happened. But in his words, the father did not tell the truth because: he was not thinking; there were a lot of things going on; and he just “blanked out.” The father thought if he went along with the mother's lies, then the situation would go away.

And when he initially appeared in court, on November 19, 2007, the father knew the stories being offered that day were untrue. The father had no explanation for why he did not tell the truth at that time. The father knew the mother was arrested on November 1, 2007, and was being blamed for injuring the child. When she had to appear for trial in Orange County in December, that was when he revealed what had actually happened. He had no answer for why he did not do something sooner to let people know what really happened. According to the father, he never told the mother to lie nor had any reason to be afraid. When asked why the mother would have lied, the father stated: “I mean—she's [the mother]. My son was at my care at the time.” The father had no explanation for why the mother falsely stated he told her he was afraid of going to jail. The father went along with the mother's story because she had already presented it to the authorities. He denied being afraid to tell the truth. He did not know why he did not tell the truth.

The father explained how the child was injured: “I was getting ready to go to my mom's house, and the baby usually runs to me when we go somewhere, when I open the door. Then he had put his arms up, and I grabbed him to put him over my shoulder to walk out to go to my mom's house. As I pulled him over my shoulder, I heard a crack.” The father then denied grabbing the child. After denying grabbing the child, the father

testified, "I just wanted to put him over my shoulder like I usually do." When the child was injured, the father telephoned the mother at her place of employment. The father told the mother what had happened. When subject to direct examination, the father testified: "Q. Did you tell her that you thought [the child] was injured? [¶] A. Yes. I did. [¶] Q. And did you tell her you thought [the child] needed to go to the hospital? [¶] Q. Yes, I did." He did not have a car at the time. Rather, the mother, who was working, had the family car. Thus, the father made the decision not to take the child to the hospital and await the mother's arrival. Despite the fact he was preparing to go to the paternal grandparents' house, the father did not think about the fact that his parents were across the street. The father testified: "[The mother] was about five minutes away. So I said, 'Okay. Let's wait and then she will drop me off and take my son to the doctor.'" As noted, the father had a group employment interview. Thus, the father proposed that the mother take him to the interview. Only then, the father expected the mother to take the injured child to the hospital.

The father denied knowing the child's ribs were broken. But when testifying, the following occurred: "Q. [D]id you tell the mother [the child] must have been injured when you were pushing him in the swing and the swing fell from the tree and [the child] fell to the ground? [¶] A. Yes, I did tell her that. [¶] . . . . [¶] Q. And did you think that might have been how the ribs were broken? [¶] A. I mean - - I guess - - yes." This incident occurred at home while the father was washing his car.

The father said he had no idea why M.R. said she was caring for the child on November 14, 2007. The father denied asking M.R. to lie for him. The father denied asking anyone to lie for him. The father testified everything M.R. said about the injury to the child was false. The parents had been together for six or seven years. The father testified the child fell frequently.

d. Dr. Thomas Grogan

Dr. Grogan, a pediatric orthopedic surgeon, reviewed the child's medical records, the social workers' reports, and Dr. Shaw's evaluation. Dr. Grogan was asked to determine how the child's fractures could have occurred. There were a total of three fractures—the left arm and two ribs. The arm fracture was caused by twisting. The injury was a minor variation of a spiral fracture. But in the medical community, the injury was not a true spiral fracture. There had to have been a twisting movement applied to the arm to produce this particular fracture. Dr. Grogan evaluated the father's final explanation as to the injury. As noted that explanation involved the child being twisted and lifted up on the father's back. The father's explanation of the movement was consistent with the child's arm fracture. Dr. Grogan testified: the rib fractures were caused by some kind of impact; they were healing; they were at least a week, probably two weeks old; they could have occurred accidentally; it was a very common location for a rib fracture that could be accidental or nonaccidental; there would be some pain, but the parent or caregiver might not realize the child was injured; and typically rib fractures were not diagnosed until a child becomes ill. Dr. Grogan agreed with Dr. Shaw's conclusions. There would have to be an impact with an object for the rib fractures to occur. But after the injury, in Dr. Grogan's view, the child would stop crying relatively quickly. The parents' stories could be consistent with the injury. Or, Dr. Grogan admitted, the child could have been kicked in the ribs.

e. Dr. Lynne Ticson

Dr. Ticson, a pediatrician, specialized in child abuse. Dr. Ticson reviewed the child's medical records and consulted with a pediatric radiologist. Both the staff at Miller Children's Hospital and at the University of Southern California had observed a fracture of the seventh rib on the child's left side. The staff at Millers Children's

Hospital had also observed a fracture of sixth rib on the left. There would have been two blows, one on each side. Dr. Ticson had never heard of a child suffering rib fractures as a result of being tossed in the air and caught. A twisting mechanism was required for a spiral fracture. To Dr. Ticson, it did not seem likely the child's broken arm could have occurred when the father picked up the youngster as previously discussed. But such injuries could occur accidentally.

f. The juvenile court's adjudication ruling

The juvenile court ruled as follows: the mother was totally lacking in credibility; the father had lied to the police and everyone else; the child had suffered multiple injuries; and the department met its burden by proving by a preponderance of the evidence that the injuries would not ordinarily occur except as the result of a deliberate, unreasonable, and neglectful act. The juvenile court sustained the first amended section 300 petition as modified as follows: "In 2007, [I.R.] was hospitalized and found to be suffering from a detrimental and endangering condition consisting of a fracture of the left humerus, a hematoma and abrasion to the child's forehead and an abrasion to the child's cheek. In addition, subsequent examinations revealed fractures to the right 6th and 7th lateral ribs. Further, the mother [and] the father . . . fabricated their accounts of the child's injuries. Further, the child's injuries are consistent with non-accidental trauma and physical abuse. Further, such injuries would not ordinarily occur except as the result of deliberate, unreasonable and neglectful acts by the child's mother and the father, who had care, custody and control of the child. Such deliberate, unreasonable and neglectful acts on the part of the mother and the father, endanger the child's physical and emotional health and safety, create a detrimental home environment and place the child at risk of serious physical and emotional harm and damage." The juvenile court found the child was a person described by section 300 subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse).



## 2. The contested disposition hearing

### a. The father's testimony

The father testified it was a mistake to lie. He had enrolled in parenting and anger management classes and was participating in individual counseling. He had completed the parenting course as of April 9, 2008. The father was seeing a counselor, Mr. Mahan, for about one month. If ordered to complete other programs, the father testified he would be willing to do so. In response to a question about ever intentionally harming the child, the father testified: "No, I wouldn't. He's my son. Why would I do something like that? [¶] I mean it hurts. He is placed with somebody else right now." The father claimed to love the child and would do whatever was necessary to make sure they were reunified. On cross-examination, the father said he had not wanted the lies to be believed: "At some point, I was going to come out with the truth, and I did. I finally did." The father denied that he wanted to tell the truth only after the mother said he had caused the injury.

### b. The mother's testimony

The mother testified she had: completed 12 weeks of parenting classes and 10 counseling sessions; learned to be a better person; never nonaccidentally hurt the child and never saw the father do so; and been visiting the child for 2 hours on Wednesdays and for Saturday outings. The child spent more time during the visits with the mother than with the prospective adoptive mother. The child cried when the visits ended because he wanted to leave with the parents. When speaking to them during visits, the child referred to the parents as "mother" and "daddy." The child called the caretaker "Mommy." During visits, the mother played games with the child. The mother had been attending Golden West College completing her prerequisites to become a registered

nurse. The mother believed the juvenile court should order reunification services. She testified: “I will be the best mother ever. I wouldn’t know what I would do without my son.” She also testified, “I am really sorry for lying.” The father was telling the truth when he testified he never asked her to lie. She just felt under pressure with everyone questioning her: “So things started going through my head and I just started lying. I know that was wrong.” But she admitted the father asked her not to tell anyone how the child was injured. The father was lying when he testified he did not tell her not to tell anyone. When cross-examined, the mother testified the parents had always visited the child together; she had not been to visit the child without the father.

#### c. The disposition order

The juvenile court found: the parents were still living together; the mother was one of the least credible witnesses it had ever seen; one if not both of the parents continued to lie; and the parents were not believable. The juvenile court found by clear and convincing evidence that a substantial danger existed to the child’s physical or mental health. The child was declared a dependent of the court under section 300, subdivisions (a), (b), and (e). The juvenile court denied reunification services to the parents. The juvenile court set a section 366.26 hearing for September 17.

#### G. The Mother’s September 11, 2008 Section 388 Petition

The mother filed a section 388 modification petition on September 11, 2008. She asserted that following the juvenile court’s May 19, 2008 order denying her reunification services: “I have completed a parenting class and anger management series at the Intercommunity Child Guidance Center. I have participated in more than twenty sessions of individual counseling and continue to attend. I have had consistent and positive visitation with my son.” In support of her argument that granting her reunification services would benefit the child, the mother stated: “My son and I have a loving

relationship. He knows that I am his mother and is happy to see me when I visit and sad when I have to leave him.” The mother further declared: “I am [the child’s] mother. I visit my son each Saturday and sometimes on Sunday if my Aunt is available. Every visit my son is really happy to see me. [¶] . . . When I am with [my son] I bathe him, feed him, change his diapers and sometimes put him to sleep. I read him books and we draw and color together. We play games and do many activities appropriate for children his age. I am also teaching him his ABC[s] and counting skills. [¶] . . . During our visits I have taken [my son] to the park, Chucky Cheese, the zoo, the Orange County Fair, bowling, pool parties, and several restaurants. I also organized a party at my aunt’s house to celebrate [the child’s] second birthday. Friends and family members came over for a cake and piñata. [¶] . . . [My son] and I are very affectionate with one another during visits, sharing kisses, hugs and ‘I love you[s].’ In spite of the separation, [the child] knows that I am his mother. When the visit is over [he] becomes very sad. He cries and wants to come with me when I leave. [¶] . . . I have participated in more than 20 sessions of individual counseling and continue to attend weekly. [¶] . . . I have completed a parenting class and anger management series at the Intercommunity Child Guidance Center. [¶] . . . I love my son very much and he loves me. I would appreciate the opportunity to reunify with my son and will do whatever is asked of me to make that happen.”

The mother’s therapist trainee, Ms. Schrock, submitted a letter dated August 27, 2008: “This letter is to certify that [the mother] has attended and participated in 20 sessions of individual psychotherapy. Topics discussed throughout psychotherapy include abuse spotting, appropriate modes of discipline, and parenting techniques. [¶] [The mother] has shown greater levels of autonomy throughout the course of therapy as demonstrated by her moving out of her boyfriend’s house. [The mother] has also shown an increasing amount of responsibility for her son by providing various daily necessities for him even though she has not been his legal guardian throughout this time.” The child’s caretaker, the prospective adoptive mother, also provided a letter, dated August 27, 2008: “I . . . [have] been taking care of my grand nephew . . . since April 28, 2008.

When [the mother] comes on her schedule[d] dates to visit him, she shows motherly affection and attention to her son.” The juvenile court set the mother’s section 388 petition for a hearing on October 17, 2008. The court also ordered the department to provide a report addressing the mother’s reunification petition.

#### H. September 2008

The department filed a September 17, 2008 section 366.26 report. The child continued to reside in his foster home. The department viewed the residence as a prospective adoptive home. The prospective adoptive family was related to the child and had known him previously from family functions. An adoption home study was nearly complete and the department expected it to be approved. The prospective adoptive parents were a married couple with three children of their own. The prospective adoptive parents and the child had developed a strong attachment. The adoptive parents felt the child was already their son.

The mother and maternal grandmother had been visiting the child regularly on weekends and the visits were going well. The father’s contact with the child was sporadic. The mother was five months pregnant with her second child. The child’s father also fathered the new baby. The department observed, “The [department] continues to monitor this situation closely and will [assess] the safety of the newborn in view of the fact that the father has not complied with the court orders to address the physical abuse of [the present child].” The department recommended parental rights termination. On September 18, 2008, the juvenile court set a contested section 366.26 hearing for October 17, 2008.

#### I. October 2008

On October 1, 2008, the mother enrolled in a parenting education program provided by the Bellflower Unified School District. The 10-week program was entitled,

“Developing Capable People.” As of October 15, 2008, she had attended three classes. A parenting education specialist, Marquitta Infante, reported: “[The mother] is attentive and participates in all group activities. I appreciate her honesty and willingness to learn additional skills in order to be a more effective parent.”

The department filed an ex parte application on October 17, 2008. The department recommended no reunification services be provided to the mother. The department recounted the following. In July 2008, the mother failed to appear for some visits without cancelling them in advance. But, the department noted, “[F]or the most part mother had visited with her son at least once a week, and sometimes twice a week.” The department had concerns about the quality of the visitation and the mother’s ability to supervise and safeguard the child.

The prospective adoptive parents and their three children, the child, the mother, the father, and the father’s five year-old younger sister, had gone to the Orange County Fair. The parents did not buy the child any food or drink and had not brought any snacks for him. The prospective adoptive mother reminded the parents that during visitation she expected them to take full responsibility for their child. Further, the prospective adoptive mother advised the parents they were expected to demonstrate they had the ability to care, supervise, and provide for the child. Even with that reminder, the parents failed to feed the child. The mother and father bought food for themselves but none for their son. The prospective adoptive mother took over caring for the child. The mother and father sat and ate and watched the prospective adoptive mother feed their son. At one point, the mother and father left without notice. Upon their return, the father asked the prospective adoptive mother where his five-year-old sister was. The prospective adoptive mother had been supervising the child and her own three children. The prospective adoptive mother did not expect to have to also watch the father’s younger sister. The father’s five-year-old sister was missing. The parents obviously failed to supervise the youngster. At another point, the mother stopped to look at “freebies” and released the child’s hand. The child wandered away. The prospective adoptive mother confronted the mother. The mother said, “[O]h, I didn’t realize that he let go of my hand.”

Based on these experiences, the prospective adoptive mother realized that the mother did not have adequate parenting ability or skills. The prospective adoptive mother repeatedly had to intervene to keep the child safe. The prospective adoptive mother further related that on a number of prior occasions, during visits, the mother had failed to adequately supervise the child. The prospective adoptive mother also stated that the mother had not brought the child any clothing, toys, diapers, or food, except for one pair of shoes and occasional small snacks.

Department social worker Dima Hernandez reported the mother had become pregnant and had failed to so inform the department. When asked about the pregnancy, the mother stated she was waiting to be asked whether she was expecting another child. The mother was advised it was her responsibility to report a pregnancy. The mother admitted she was five months pregnant by the father. The mother said she had left the father because she had become financially able to do so. However, the mother also said she was leaving the father because, “[T]hat’s what the court wants me to do so I can get my son back.” Ms. Hernandez reported that the mother did not seem to understand that the physical abuse allegations had been sustained because she allowed the child to be around the father which thereby put the youngster at risk. The mother continued to claim to Ms. Hernandez that the child’s injuries were accidental. Ms. Hernandez concluded the mother was unable “to fully understand the seriousness” of the sustained allegations. Ms. Hernandez did not believe the mother had “gained any insight towards the issues” of the case.

On August 21, 2008, the mother spoke to the prospective adoptive mother. The mother had “broken up” with the father and did not want joint visits anymore. But on August 23, 2008, the parents visited together and took the child to a zoo. The prospective adoptive mother stated the mother and father were “speaking as usual” and it did not appear there had been a break-up. The mother had arrived at all but two recent visits with the father.

As noted, the prospective adoptive mother wrote a letter in support of the mother’s section 388 petition. According to the department: “Caregiver stated that she did not

want to write anything, but under pressure she ended up writing a small paragraph stating that mother's visits are ok. She felt pressure because she was afraid to express her true feelings about [the mother] because she did not want anyone in the family to be upset with her. Recently, caregiver reported that she finally decided to confront [the mother] and her family and told them her concerns regarding [the child's] safety if he is ever released to mother. She stated that she informed them that she does not feel that mother is able to care safely for [the child][,] that she does not believe mother would permanently leave [the father], and does not feel that [the child] would be safe when [the father] is around."

The mother's half-sister spoke to Ms. Hernandez. According to the half-sister the mother had voiced the possibility of leaving the father and then, when the dependency matter was closed, going back to live with him. The mother's half-sister believed the mother would always go back to the father. The half-sister had been trying for a long time to get the mother to break up with the father, as had other maternal relatives. But, the mother said she still loved the father. The mother had started dating the father when she was about 14 years old and they had been together for 7 or so years. The mother's half-sister also told Ms. Hernandez that there was domestic violence between the parents. The half-sister had seen the mother with bruises on many occasions. The mother admitted to her that the father had caused the bruises. The prospective adoptive mother had also observed the mother with bruises. The prospective adoptive mother believed the mother was in a domestic violence situation. The department's report related: "[The caregiver] specifically reported that mother one time had dark bruises on her arms[;] it looked like someone pinched her with a lot of force. She had also observed many bruises on mother's arms and her legs. She specifically remembers mother having a large bruise on her leg in August of 2008."

On October 17, 2008, there was a continuance request. The juvenile court continued the hearing on the mother's section 388 petition, to be followed by a section 366.26 hearing. On November 3, 2008, children's social worker Nathan Singer informed the juvenile court: "The matter is on calendar this date for a [contested section 366.26

hearing] as to the adoption of this minor, as well as [m]other's [section] 388 petition. The home study for the applicant is complete. The child is developing very well in his current placement, and the caregivers remain fully committed to adopting him. No impediments to finalization are foreseen." The matter was subsequently continued from November 3 to December 22, 2008. As of December 22, 2008, the mother had participated in nine additional psychotherapy sessions, between October 7 and December 15, 2008.



J. December 22, 2008

The juvenile court denied the mother's section 388 petition. The juvenile court found that the case had been pending for 12 months and there was no sufficient showing of changed circumstances or that it was not in the child's best interest to grant reunification services to the mother. The juvenile court terminated the mother's and father's parental rights. The juvenile court found: the parents' efforts did not outweigh the benefit of adoption for the child who was then two and a half years old; he had been out of the parents' care for a year; and they had made only minimal progress in resolving the issues that led to his detention.

### III. DISCUSSION

#### A. The Mother's Appeal

##### 1. The section 388 petition

The mother contends it was an abuse of discretion to deny her section 388 petition. Pursuant to section 388, a parent may interpose a motion to change or modify a prior juvenile court order at any time after a child is declared a dependent of the court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Josiah S.* (2002) 102 Cal.App.4th 403, 418.) The person filing the modification request has the burden of showing changed circumstances that would promote the best interests of the child by a preponderance of the evidence. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

The modification request must be viewed in the context of the dependency proceedings as a whole. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307; *In re Heather P.*

(1989) 209 Cal.App.3d 886, 891.) As our Supreme Court explained in *Marilyn H.*: “The requirement of petitioning the court for a hearing pursuant to section 388 to show changed circumstances must be viewed in the context of the dependency proceedings as a whole. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253.) Dependency proceedings are proceedings of an ongoing nature. While different hearings within the dependency process have different standards and purposes, they are part of an overall process and ongoing case. One section of the dependency law may not be considered in a vacuum. It must be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.)” (*In re Marilyn H., supra*, 5 Cal.4th at p. 307.) After reunification services have been terminated, the juvenile court’s focus has shifted to the needs of the child for permanency and stability. (*In re Amber M., supra*, 103 Cal.App.4th at p. 685; *In re Zacharia D.* (1993) 6 Cal.4th 435, 447; *In re Marilyn H., supra*, 5 Cal.4th at p. 309.) When the section 388 modification petition is filed after reunification services have been terminated and the section 366.26 selection and implementation hearing has been set, the focus of the proceedings has shifted from the parent’s interest in the care, custody, and companionship of the child to the youngster’s best interests. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317; *In re Janee J.* (1999) 74 Cal.App.4th 198, 211; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.)

Whether an order should be modified rests within the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416; *In re Stephanie M., supra*, 7 Cal.4th at p. 318.) As the Supreme Court has held, ““[A] reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].”” [Citations.] And we have recently warned: “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to

substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318; see *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

The mother argues in part: “Mother’s biggest obstacle to overcome was her poor judgment and willingness to lie to protect Father. That poor judgment led [the department], the court and Dr. Shaw to believe that she was unable to protect or ensure [her son’s] safety and her credibility was seriously compromised. Nothing in the record suggests that anyone was concerned that Mother had or would injure [the child]. Instead, the concern was whether Mother would lie again to protect Father or fail to identify whether Father was abusing [their son]. [¶] In order to overcome the shared belief that she needed to put [the child’s] safety before her willingness to protect Father, Mother needed to leave Father and participate in counseling and parenting, which is exactly what she did. By the time Mother filed her section 388 petition in September 2008, her circumstances had changed dramatically. Of significant importance[] was that Mother had broken up with Father in August, 2008 and moved out of his house. . . . She had shown that she was willing to put [the child’s] safety over her need to share a relationship with Father. While it was later found out that Mother was pregnant with Father’s baby, it is reasonable to believe that Mother got pregnant *before* she broke up with Father, since the social worker was able to visibly notice Mother’s pregnancy by September 9, 2008.”

The juvenile court did not abuse its discretion in finding it was in the child’s best interests to deny the mother’s section 388 petition. The section 388 modification request was filed 10 months after the child was detained. No reunification services had been offered to the mother. The juvenile court had scheduled a section 366.26 hearing. At this stage of the proceedings, the child had a *compelling* right to permanency and stability. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 306; *In re Shirley K.* (2006) 140 Cal.App.4th 65, 72; *In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1504.) At the outset, the mother had lied repeatedly to protect the father. There was evidence the parents had asked others to lie. The mother even went to jail for several weeks rather than reveal what the father had told her about the purported cause of the child’s injury. The father was more concerned about what would happen to him and the

probability of going to jail. The mother should have been alarmed by the father's behavior and taken steps to protect the child. Instead, she took steps to protect the father. The mother's only explanation for the repeated lies was that she felt under pressure and she was afraid she would get into trouble. She claimed this was the first time she had lied for the father; but in fact, she had previously taken responsibility for a traffic ticket he received.

Also, the child had suffered other injuries. The mother denied that any of the injuries were intentionally inflicted. She said there was not anything she could imagine learning that would make her believe the father had intentionally injured the child. There was evidence the injuries could have been accidental. But the parents' pattern of lying about the manner in which the arm fracture occurred coupled with the presence of other injuries raised the inference the injuries were not the result of an accident. The mother continued her relationship with the father and became pregnant by him for a second time. She failed to inform the department that she was pregnant. Although she claimed to have "broken up" with the father, it did not appear that way to others. There was evidence the parents continued to visit their child together and the mother was pregnant. There was evidence the mother claimed to have left the father, but she had no real intention to remain separated from him. There was evidence the mother still loved the father. The mother's half-sister believed the mother would always go back to the father. The mother had been with the father since she was 14 years old.

Both the mother's half-sister and the prospective adoptive mother had observed bruises on the mother's arms and legs. According to the mother's half-sister, the mother admitted the father had caused the bruises. The domestic violence was ongoing. Further, the mother had blatantly failed to protect the child, and there was no indication she would do so in the future. There was no evidence the mother had confronted and addressed the issues that led to her son's detention. The juvenile court found the mother was totally lacking in credibility. The experienced juvenile court described her as the one of the least credible witnesses it had ever heard. The juvenile court did not abuse its discretion in

concluding there were no changed circumstances and that it would not be in the child's best interests to grant the mother reunification services.

## 2. The beneficial relationship exception

The mother argues she satisfied the section 366.26, subdivision (c)(1)(B)(i) beneficial relationship exception and therefore it was error to terminate her parental rights. As amended effective January 1, 2008, section 366.26 provides in part: “(c)(1) If the court determines, based on the assessment provided . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . A finding . . . that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights. Under these circumstances, the court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

At a section 366.26 hearing, the juvenile court is required to select and implement a permanent plan for the dependent child. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164; *In re Edward R.* (1993) 12 Cal.App.4th 116, 122; *In re Heather B.* (1992) 9 Cal.App.4th 535, 546.) Under section 366.26, subdivision (c)(1)(B)(i), a parent seeking to avoid termination of parental rights must show regular contact has been maintained with the child. Further, the parents must prove the child would benefit from continuing the parent-child relationship. The burden is on the parent to prove that termination of parental rights would be detrimental to the child. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The Court of Appeal has explained: “[T]he parent

must show more than frequent and loving contact or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]’ (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.) In determining whether the exception applies, the juvenile court should consider: the age of the child; the portion of the child’s life spent in the parent’s custody; the positive and negative interaction between the parent and the child; and the child’s particular needs. (*In re Amber M.*, *supra*, 103 Cal.App.4th at p. 689; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

We review the juvenile court’s determination for substantial evidence. (*In re Amber M.*, *supra*, 103 Cal.App.4th at p. 689; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 955.) As the Court of Appeal held in *L.Y.L.*: “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re Autumn H.*, *supra*, 27 Cal.4th at p. 576.) The appellant has the burden of showing the finding or order is not supported by substantial evidence. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)” (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

The juvenile court found the benefit of a permanent home outweighed any benefit the child might have with his mother. Substantial evidence supports the juvenile court’s ruling. During the first 17 months of the child’s life, while living with the parents, he suffered multiple injuries consistent with nonaccidental infliction. After he was detained, the mother was consistent in her visitation with the child, but she demonstrated a very limited ability to parent him. Moreover, the mother completely failed to recognize and to

address the issue that caused the child to become a dependent of the juvenile court—that the father was physically abusive to the youngster as well as to her. The mother lied to protect the father and even went to jail to shield him. She was willing to jeopardize the child’s physical and emotional safety. While the child was placed outside the home, the mother remained in a relationship with the father. The mother became pregnant by him for a second time. The juvenile court could reasonably conclude the mother was unable to protect her child; therefore, the child’s need for stability and permanence far outweighed any benefit from a continuing relationship with her.

#### B. The Father’s Appeal: The Beneficial Relationship Exception To Adoption

The father contends no substantial evidence supports the finding section 366.26, subdivision (c)(1)(B)(i) did not apply as to him. For all of the reasons discussed above in relation to the mother’s appeal, substantial evidence supports the juvenile court’s beneficial relationship exception determination as to the father. There was substantial evidence the father abused both the mother and their child; further, the father allowed the mother to take the blame for him in this and other matters and he refused to confront his abusive behavior.

### IV. DISPOSITION

The orders denying the mother’s Welfare and Institutions Code section 388 petition and terminating the parental rights of both parents are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.